MONTANA LEGISLATIVE HISTORY

Chapter 117 1979

Bill H 185 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 19	✓ C	Hearing Date(s)	Feb 23	✓ C
	Jan 22	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 117

HOUSE BILL NO. 185

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Judiciary.
January 22, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
January 23, 1979	Printed and placed on members' desks.
January 25, 1979	Third reading Consent Calendar, passed. Transmitted to second house.

IN THE SENATE

January 26, 1979	Introduced and referred to Committee on Judiciary.
February 27, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 1, 1979	Second reading, concurred in.
March 3, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 5, 1979	Returned from second house with amendments.
March 6, 1979	Second reading, amendments adopted.
March 7, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 185

INTRODUCED BY Mackin

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CONTRACTS AND OTHER OBLIGATIONS AND REPEALING SECTION 28-1-1112, MCA, AND SECTION 64-104, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-1-103, MCA, is amended to read:

"28-1-103. What rules govern interpretation of contracts and other obligations. The rules which govern the interpretation of contracts are prescribed by ~~chapters 2 and 3 of this title, 1-4-202 through 1-4-205,~~ and ~~39-2-705~~ Title 1. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted."

Section 2. Section 28-1-504, MCA, is amended to read:

"28-1-504. When obligation to be interpreted as though there were a ~~single~~ particular alternative did not exist. If one of the alternative acts required by an obligation is such as the law will not enforce or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other or others stood alone."

Section 3. Section 28-1-1002, MCA, is amended to read:

"28-1-1002. When burden of obligation may be transferred. The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by ~~70-17-205~~ Title 70, chapter 17, part 2."

Section 4. Section 28-1-1103, MCA, is amended to read:

"28-1-1103. Performance to one of several joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership, which is regulated by Title 70, ~~chapters 5 and 6 and part 5 of chapter 9, and Title 71, chapter 3, part 14~~ chapter 6."

Section 5. Section 28-1-1106, MCA, is amended to read:

"28-1-1106. Application of performance when there are several obligations. ~~Where~~ Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation be is manifested to the creditor, it must be so applied.

(2) If no such application be intention or desire is

then ~~made~~ manifested, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportions, ~~and on~~ An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If ~~neither party makes such~~ application is not made as prescribed in subsection (1) or (2) within the time prescribed ~~herein~~, the performance must be applied to the extinction of obligations in the following order and, if there be is more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first--~~of~~interest due at the time of the performance;

(b) second--~~of~~principal due at that time;

(c) third--~~of~~the obligation earliest in date of maturity;

(d) fourth--~~of~~an obligation not secured by a lien or collateral undertaking;

(e) fifth--~~of~~an obligation secured by a lien or collateral undertaking."

Section 6. Section 28-1-1111, MCA, is amended to read:

"28-1-1111. Receipt for money, instrument, or property delivered. ~~(1)~~ Whoever pays money or delivers an instrument or property is entitled to a written receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

~~(2) A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligations.~~"

Section 7. Section 28-1-1202, MCA, is amended to read:

"28-1-1202. Effect of offer. ~~(1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.~~

~~(2)~~ An offer of payment or other performance duly made, ~~though the title to the thing offered be not transferred to the creditor,~~ stops the running of interest on the obligation and has the same effect upon all incidents of the obligation as a performance thereof, whether or not the title to anything offered is transferred to the creditor."

Section 8. Section 28-1-1205, MCA, is amended to read:

"28-1-1205. To whom offer must be made. An offer of

performance must be made to the creditor, to any one ~~or two~~ or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation ~~if such creditor or authorized person is present at the place where the offer may be made and, if not, wherever the creditor may be found.~~"

Section 9. Section 28-1-1212, MCA, is amended to read:

"28-1-1212. Objections to mode of offer -- waiver. All objections to the mode of an offer of performance which the creditor has an opportunity to state at the time to the person making the offer and which could be then be obviated by ~~him~~ such person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor must specify the amount, terms, or kind which he requires."

Section 10. Section 28-1-1303, MCA, is amended to read:

"28-1-1303. Effect when performance prevented by other causes. If full performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance."

Section 11. Section 28-2-102, MCA, is amended to read:

"28-2-102. Essential elements of a contract. ~~(1)~~ It is essential to the existence of a contract that there ~~should~~ be:

~~(a)~~(1) identifiable parties capable of contracting;

~~(b)~~(2) their consent;

~~(c)~~(3) a lawful object; and

~~(d)~~(4) a sufficient cause or consideration.

~~(2) It is essential to the validity of a contract not only that the parties should exist but that it should be possible to identify them.~~"

Section 12. Section 28-2-201, MCA, is amended to read:

"28-2-201. Who may contract. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. Minors and persons of unsound mind have only such capacity as is defined by ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204~~ this part, 28-10-104, and Title 41, chapter 1~~, parts 1 through 3, except 41-1-303~~."

Section 13. Section 28-2-206, MCA, is amended to read:

"28-2-206. Assignment of nonnegotiable written contract. A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement ~~in like manner with~~ the same as a negotiable ~~instruments~~ instrument. Such endorsement ~~shall~~

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~~transfer~~ transfers all the rights of the assignor under the ~~instrument~~ contract to the assignee, subject to all equities and defenses existing in favor of the ~~maker~~ contract debtor at the time of the endorsement or arising before notice of the assignment is received by him."

Section 14. Section 28-2-403, MCA, is amended to read:

"28-2-403. What constitutes menace. Menace consists in a threat of:

(1) such duress as is specified in subsections (1) and (3) of 28-2-402;

(2) unlawful and violent injury to the person or property of any such person ~~as it is specified~~ in circumstances described in 28-2-402; or

(3) injury to the character of any such person."

Section 15. Section 28-2-501, MCA, is amended to read:

"28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted."

Section 16. Section 28-2-502, MCA, is amended to read:

"28-2-502. When consent is considered fully communicated. Consent is ~~deemed~~ considered to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity ~~to~~ with ~~28-2-501(2)~~ 28-2-501."

Section 17. Section 28-2-504, MCA, is amended to read:

"28-2-504. Acceptance to be absolute. An acceptance must be absolute and unqualified or must include in itself an acceptance of that character which the proposer can separate from the rest and which will ~~conclude~~ bind the person accepting. A qualified acceptance is a new proposal."

Section 18. Section 28-2-512, MCA, is amended to read:

"28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by ~~28-2-501(1)~~ 28-2-501 and 28-2-502 before his acceptance has been communicated to the former;

(2) the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or ~~insanity~~ serious mental illness of the proposer."

Section 19. Section 28-2-707, MCA, is amended to read:

"28-2-707. What conditions void. A condition in a contract the fulfillment of which is impossible or unlawful within the meaning of part 6 ~~of this chapter~~ and this part or which is repugnant to the nature of the interest created by the contract is void."

Section 20. Section 28-2-722, MCA, is amended to read:

"28-2-722. Contracts for personal services limited to two years. A contract to render personal ~~service other than a contract of apprenticeship, as provided in the chapter on apprentices,~~ services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it~~,~~ but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation."

Section 21. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following ~~contracts~~ agreements are invalid unless the same or some note or memorandum thereof be is in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent be is in writing, and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) ~~In the following cases the agreement is invalid unless the same or some note or memorandum thereof be in writing and subscribed by the party charged or by his agent; evidence, therefore,~~ Evidence of the an agreement ~~cannot be received~~ described in subsection (1) is not admissible without the writing or secondary evidence of its contents~~:~~

~~(a) an agreement that by its terms is not to be performed within a year from the making thereof;~~

~~(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;~~

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~~(c) an agreement made upon consideration of marriage other than a mutual promise to marry~~

~~(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent be in writing, subscribed by the party sought to be charged.~~

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof ~~be~~ is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) ~~shall~~ do not apply to agreements subject to the Uniform Commercial Code."

Section 22. Section 28-2-905, MCA, is amended to read:

"28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) When ~~Whenever~~ the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, ~~and therefore~~ Therefore, there can be between the parties and their representives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where ~~when~~ a mistake or imperfection of the

writing is put in issue by the pleadings;

(b) where ~~when~~ the validity of the agreement is the fact in dispute.

(2) But ~~this~~ This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties."

Section 23. Section 28-2-1701, MCA, is amended to read:

"28-2-1701. How contract extinguished. (1) A contract may be extinguished in ~~like~~ the same manner with as any other obligation and also in the manner prescribed by part 16 and this ~~section, 28-2-1601, 28-2-1602, and 28-2-1704 through 28-2-1713~~ part.

(2) A contract is extinguished by its rescission."

Section 24. Section 28-2-1711, MCA, is amended to read:

"28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or

obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party;

(2) if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;

(3) if such consideration becomes entirely void from any cause;

(4) if such consideration, before it is rendered to him, fails in a material respect from any cause; or

(5) by ~~consent of~~ if all the other parties consent."

Section 25. Section 28-3-206, MCA, is amended to read:

"28-3-206. Uncertainty to be resolved against party causing it. In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except that in the case of a contract between a public officer or body, as such, and a private party, ~~in~~ which it is presumed that all uncertainty was caused by the private party."

Section 26. Section 28-3-403, MCA, is amended to read:

"28-3-403. Evidence of usage to clarify. In conformity with the rules of evidence, upon a trial evidence may be

given of usage to explain the true character of ~~an act or~~ a contract ~~where~~ if such true character is not otherwise plain, but usage is never admissible except as an instrument of interpretation."

Section 27. Section 28-3-702, MCA, is amended to read:

"28-3-702. Necessary and incidental terms. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom unless some of them are expressly mentioned therein, ~~when~~ in which case all other things of the same class are ~~deemed~~ considered to be excluded."

Section 28. Section 28-10-104, MCA, is amended to read:

"28-10-104. Who may appoint an agent, who may be an agent. Any person having capacity to contract, ~~except a minor,~~ may appoint an agent, and any person may be an agent. ~~A minor cannot give a delegation of power.~~"

Section 29. Section 28-10-211, MCA, is amended to read:

"28-10-211. How agent's act ratified. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, ~~where~~ whenever an oral authorization would suffice, by knowingly accepting or ~~restraining~~ retaining the benefit of the act ~~with notice thereof~~."

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Section 30. Section 28-10-301, MCA, is amended to read:

"28-10-301. Agent not to exceed actual authority. An agent must not exceed the limits of his actual authority as defined by ~~parts 1, 2, and 4 through 8 of~~ this chapter and parts 5 and 6 of chapter 11 of title 30."

Section 31. Section 28-10-404, MCA, is amended to read:

"28-10-404. When and as to whom agent's authority restricted. Every agent has actually such authority as is defined by ~~this party parts 1, 2, and 5 through 8 of~~ this chapter, and parts 5 and 6 of chapter 11 of Title 30 unless specially deprived thereof by his principal and has even then such authority ostensibly except as to persons who have actual or constructive notice of the restriction upon his authority."

Section 32. Section 28-10-405, MCA, is amended to read:

"28-10-405. Implied powers of agent. An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

(2) make a representation respecting any matter of fact, ~~not including~~ except the terms of his authority, but

upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made."

Section 33. Section 28-10-502, MCA, is amended to read:

"28-10-502. Effect of unauthorized employment of subagent. If an agent employs a subagent without authority, the former is a principal and the latter his agent and the principal of the former has no connection with the latter. A ~~mere agent of an agent is not responsible as such to the principal of the latter.~~"

Section 34. Section 28-10-703, MCA, is amended to read:

"28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of his principal to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same, and he is responsible therefor if, after ~~notice to the owner~~ such demand, he delivers it to his principal."

Section 35. Section 28-10-704, MCA, is amended to

read:

"28-10-704. Applicability of laws relating to capacity to contract. The provisions of this part are subject to the provisions of ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204,~~ chapter 2, part 2; 28-10-104, ~~;~~ and Title 41, chapter 1, ~~parts 1 through 3, except 41-1-303.~~"

Section 36. Repealer. Section 28-1-1112, MCA, and section 64-104, R.C.M. 1947, are repealed.

-End-

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 184	relating to criminal procedure	1/16	Marks	Friday 19th	do pass-amend	1/24
HB 185	relating to contracts and other obligations	1/16	Marks	Friday 19th	do pass	1/24
HB 194	revise laws in title 1	1/16	Manuel	Friday 19th	do pass-amend	1/24
HB 203	adopt uniform enforcement of foreign judgments act	1/16	Anderson	Friday 19th	do pass-amend	1/24
HB 223	permit supervisory law enforcement personnel to control telephone to and from person holding hostages	1/17	Conroy	Monday 22nd	do pass-amend	1/24
HB 224	offense of custodial interference an individual taken from lawful custody to lawful custody - arrest	1/17	Conroy	Monday 22nd	do pass	1/22

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 19, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Friday, January 18. All members were present except Representatives Seifert and Teague, with Representative Holmes excused.

Scheduled for hearing were House Bills 182, 183, 184, 185, 194 and 203.

HOUSE BILL NO. 183: Representative Marks. This bill was introduced at the request of the code commissioner. The bill will revise and clarify the laws relating to contracts. The Supreme Court was interested in the bill and it was partly at their request that it was introduced. Mr. Marks offered two amendments. He asked that memorials be deleted, since no longer used by the Legislature, and also the waiver of process division. He discussed this. We will either reprint both sections or include both language in the section and then come in with a deletion. In making a composite we would not take out a substantive point of law.

LARRY MESLER: He wondered if he could make an amendment.

There was no discussion and the hearing closed on House Bill 183.

HOUSE BILL NO. 184: Representative Marks introduced Joan Mayer from the Legislative Counsel who will explain the bill. She went through the bill. There was discussion on page 2 about the meaning of seized person.

Representative Teague came in and Representative Rosenthal was excused.

There was discussion about the number of jurors. This bill pertains just to the number that was drawn first.

There was no other discussion and the hearing closed on House Bill 184.

REPPESENTATIVE DAY: I just returned from testifying before the Committee for The Board of Natural Resources in North Dakota. He read a copy of a bill given him by a legislator from North Dakota.

HOUSE BILL NO. 185: Representative Marks introduced Joan Mayer from the Legislative Counsel who will explain the bill. This bill will generally revise and clarify the laws relating to contracts and other obligations. I tried to bring this section in accord with the original contract law.

Representative Seifert came in.

There were two sections that referred to the same thing, so I am recommending that one whould be repealed. The definition of person of unsound mind, refers to lunatics, this is obsolete terminology and we are suggesting that it be repealed.

There was no discussion and the hearing closed on House Bill No. 185.

HOUSE BILL NO. 194: Representative Manuel introduced Joan Mayer from the Legislative Counsel who will explain the bill. She passed out suggested amendments. On page 12 the code commissioner will report only every two years.

There was no discussion and the hearing closed on House Bill No. 194.

HOUSE BILL NO. 203: Representative Anderson. This bill is designed to adopt the revised uniform enforcement of foreign judgments act. Montana has three members appointed to this commission. Diana Dowling is one of the members. He explained how the law now works and what this bill would do to change it.

BRUCE McGINNIS: Department of Revenue. We have prepared a bill identical to this one with the provision limit only to tax judgments. We are in support of the bill. If you pass this bill our bill could be eliminated. This would give us a more effective way of collecting judgments.

J. C. WEINGARTNER: State Bar of Montana. We may have one problem, and gave an example. We can not enforce a gambling deft in Montana. I don't know if this might be a problem. You might want to have something in here that would enforce a gambling debt.

REPRESENTATIVE ANDERSON: We must give full faith and credit according to the U.S. Constitution. A number of states have already enacted this legislation. I would urge your support of the bill.

Then followed discussion about the proposed addition of a section.

MR. McGINNIS: Montana does not have the uniform act on its books at the present time.

There was discussion about whether this was new law or existing law and the hearing closed on House Bill No. 203.

intent will become legislative history unless it is altered each time by the committee. (copy of all amendments attached)

SENATE BILL NO. 4: Larry Weinberg will check further another section in the bill, 71-1-211.

HOUSE BILL NO. 183: Discussion about a possible amendment for a correction that should be made. Representative Lory moved to amend (attached) and the motion carried with the vote unanimous.

Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 185: Representative Eudaily moved "do pass" and the motion carried with the vote unanimous. Representative Lory moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

There was general discussion by various members of the committee as to the fact that they do not like the consent calendar and that it had a tendency to slow proceedings rather than expedite them as it was intended.

Representative Day moved that the Judiciary Committee bills should come off the consent calendar if the sponsor is not there to defend the bill. The motion carried with the vote unanimous.

HOUSE BILL NO. 194: There was much discussion about the definition of affinity and consanquinity as stated in the bill. Larry Weinberg will check and bring before the committee before further action is taken.

HOUSE BILL NO. 224: Representative Conroy moved "do pass." There was discussion about subsection (3) and whether or not it should be there. The question was called and the motion passed with the vote unanimous. Representative Conroy moved that the bill be placed on the consent calendar and the vote was unanimous to do so with the exception of Representative Lory. It will not go to the consent calendar. Representative Lory withdrew his vote of "no". It will go to the consent calendar.

The meeting adjourned at 9:50 so that members could attend the joint hearing on Senate Bill #65.

John Scully, Chairman

JPS:mes

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

	BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON-CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON-CURRED IN DATE
55	SB 260	1/26/79	2/6/79	2/9/79			2/12/79			
56	SB 261	1/26/79	2/13/79	2/12/79			2/12/79			
57	HB 185	1/26/79	2/23/79	2/23/79					2/23/79	
58	SB 271	1/29/79	2/12/79	2/15/79			2/12/79			
59	SB 274	1/29/79	2/13/79	2/15/79		2/15/79				
60	HB 224	1/29/79	2/28/79	3/5/79					3/1/79	
61	SB 219	1/29/79	2/15/79	Tabled 2/15/79						
62	SB 277	1/29/79	2/12/79	Tabled 2/15/79		Tim Rule 2-5 2/12/79				
63	SB 278	1/29/79	2/15/79	2/19/79			2/12/79			
64	SB 281	1/29/79	2/10/79	2/10/79	2/10/79					
65	SB 282	1/29/79	2/12/79	2/12/79		2/12/79				
66	SB 283	1/29/79	2/1-/79	2/19/79			2/18/79			
67	SB 284	1/29/79	2/12/79	3/16/79	2/15/79					
68	SB 288	1/30/79	2/8/79	2/9/79			2/8/79			
69	SB 293	1/30/79	2/8/79	2/9/79			2/8/79			
70	SB 295	1/30/79	2/12/79	2/12/79		2/12/79				

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 23, 1979

The forty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, chairman, in room 331 of the capitol building on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 184:

This is an act to generally revise and clarify the laws relating to criminal procedure. Joan Mayer from the Legislative Council offered an explanation of what this bill does. (See Exhibit A.) She also offered a handout. (See Exhibit B.)

There were no further proponents and no opponents. No questions were asked and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 185:

This is an act to generally revise and clarify the laws relating to contracts and other obligations, etc. Joan Mayer from the Legislative Council offered handouts in connection with the law on this bill. (See Exhibits C and D.) She went over the bill section by section.

Senator Towe moved that 28-1-1112 be striken out of the repealer and the title. The motion carried unanimously.

Senator Towe moved that on page 7, line 3, the bill be amended by striking "contract debtor" and insert "maker". The motion carried.

Senator Towe moved that the bill be amended on page 4, lines 12 through 16 by reinserting all the stricken material. The motion carried with Senator Brown voting no.

Senator Towe moved that the bill be amended on page 10, line 19 following (1) insert "(a), (b), (c), and (d). The motion carried unanimously after much discussion.

Senator Towe moved that the bill be amended on page 16, lines 5 through 12, by striking section 33 in its entirety. The motion carried unanimously.

64-102. (5674) Periods of minority—how calculated. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R. C. M. 1921. Cal. Civ. C. Sec. 26.

Collateral References

Time⇨4.
86 C.J.S. Time § 9.
42 Am. Jur. 2d 15, Infants, § 6.

Inclusion or exclusion of day of birth in determining attainment of majority period. 5 ALR 2d 1147-1152.

Applicability of criminal statutes relating to offenses against children of a specified age with respect to a child who has passed the anniversary date of such age. 73 ALR 2d 874.

64-103. (5675) Unborn children. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R. C. M. 1921. Cal. Civ. C. Sec. 29. Field Civ. C. Sec. 12.

Collateral References

Infants⇨1.

43 C.J.S. Infants §§ 1, 3.
42 Am. Jur. 2d 9, Infants, § 2.

Action for death of unborn child. 15 ALR 3d 992.

Wrongfully causing one to be born, tort liability for. 22 ALR 3d 1141.

64-104. (5676) Persons of unsound mind. Persons of unsound mind, within the meaning of this code, are idiots, lunatics, imbeciles, and habitual drunkards.

History: En. Sec. 14, Civ. C. 1895; re-en. Sec. 3588, Rev. C. 1907; re-en. Sec. 5676, R. C. M. 1921. Field Civ. C. Sec. 13.

Collateral References

Drunkards⇨1; Mental Health⇨1 et seq.

28 C.J.S. Drunkards § 2; 44 C.J.S. Insane Persons § 2.
41 Am. Jur. 2d 541, 546, Incompetent Persons, §§ 2, 7.

64-105. (5678) Powers of minors. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R. C. M. 1921. Cal. Civ. C. Sec. 33. Field Civ. C. Sec. 15.

Agency—Parents' Neglect To Give Notice Not Imputable to Child—Child Incapable of Appointing Agent

Neglect of parents of injured child to give sixty-day notice provided for by Ch. 122, Laws 1937 (11-1305) may not be imputed to the child, and since, under this section, a child is incapable of appointing an agent for any purpose, it is questionable whether the statute can be complied with in that respect by anyone as agent. Child's cause of action for personal injuries is a property right over which, under section 61-110, a parent has no control. Jazich v. Belanger, 111 M 48, 52, 105 P 2d 738.

Collateral References

Infants⇨5; Powers⇨6.
43 C.J.S. Infants § 24; 72 C.J.S. Powers § 4.

64-106. (5679) Contracts of minors—disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter, and to the provisions of the chapters on marriage.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R. C. M. 1921. Cal. Civ. C. Sec. 34. Field Civ. C. Sec. 16.

28-1-1106. Application of performance when there are several obligations. Where a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation be manifested to the creditor, it must be so applied.

(2) If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion, and an application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first -- of interest due at the time of the performance;

(b) second -- of principal due at that time;

(c) third -- of the obligation earliest in date of maturity;

(d) fourth -- of an obligation not secured by a lien or collateral undertaking;

(e) fifth -- of an obligation secured by a lien or collateral undertaking.

History: En. Sec. 2006, Civ. C. 1895; re-en. Sec. 4928, Rev. C. 1907; re-en. Sec. 7430, R.C.M. 1921; Cal. Civ. C. Sec. 1479; Based on Field Civ. C. Sec. 705; re-en. Sec. 7430, R.C.M. 1935; R.C.M. 1947, 58-407.

28-1-1107 through 28-1-1110 reserved.

28-1-1111. Receipt for money, instrument, or property delivered. (1) Whoever pays money or delivers an instrument or property is entitled to a receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

(2) A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

History: (1)En. Sec. 3411, C. Civ. Proc. 1895; re-en. Sec. 8037, Rev. C. 1907; re-en. Sec. 10681, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2075; re-en. Sec. 10681, R.C.M. 1935; Sec. 93-2201-2, R.C.M. 1947; (2)En. Sec. 2034, Civ. C. 1895; re-en. Sec. 4943, Rev. C. 1907; re-en. Sec. 7445, R.C.M. 1921; Cal. Civ. C. Sec. 1499; Field Civ. C. Sec. 720; re-en. Sec. 7445, R.C.M. 1935; Sec. 58-122, R.C.M. 1947; R.C.M. 1947, 58-122, 93-2201-2.

28-1-1112. Objections to tender -- waiver. The person to whom a tender is made must at the time specify any objection he may have to the money, instrument, or property or he must be deemed to have waived it; and if the objections be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires or be precluded from objecting afterward.

History: En. Sec. 3412, C. Civ. Proc. 1895; re-en. Sec. 8038, Rev. C. 1907; re-en. Sec. 10682, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2076; re-en. Sec. 10682, R.C.M. 1935; R.C.M. 1947, 93-2201-3.

28-1-1113. Creditor's retention of thing which he refuses to accept. If anything is given to a creditor by way of performance, which he refuses to accept

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MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 135

Respectfully report as follows: That House Bill No. 135,

third reading bill, be amended as follows:

1. Title, line 7.
Strike: "23-1-1112, MCA, AND SECTION"

2. Page 4, line 16.
Following: "property."
Insert: "(1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.
(2)"

3. Page 7, line 3.
Following: "maker"
Strike: "contract debtor"
Insert: "maker"

DO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

February 23 19 79

4. Page 10, line 19.
Following: "in"
Insert: "(a) through (d) of"

5. Page 16, lines 5 through 12.
Strike: section 33 in its entirety
Renumber: all subsequent sections

6. Page 17, lines 7 and 8.
Strike: "28-1-1112, MCA, and section"

7. Page 17, line 8.
Following: "1947,"
Strike: "are"
Insert: "is"

And, as so amended,
BE CONCURRED IN

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 185

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CONTRACTS AND OTHER OBLIGATIONS AND REPEALING SECTION ~~28-1-1112, MCA, AND SECTION 64-104,~~ R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-1-103, MCA, is amended to read:

"28-1-103. What rules govern interpretation of contracts and other obligations. The rules which govern the interpretation of contracts are prescribed by ~~chapters 2 and 3 of this title, 1-4-202 through 1-4-205,~~ and 39-2-705 Title 1. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted."

Section 2. Section 28-1-504, MCA, is amended to read:

"28-1-504. When obligation to be interpreted as though there were a ~~single~~ particular alternative did not exist. If one of the alternative acts required by an obligation is such as the law will not enforce or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other or others stood alone."

Section 3. Section 28-1-1002, MCA, is amended to read:

"28-1-1002. When burden of obligation may be transferred. The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by ~~70-17-205~~ Title 70, chapter 17, part 2."

Section 4. Section 28-1-1103, MCA, is amended to read:

"28-1-1103. Performance to one of several joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership, which is regulated by Title 70, ~~chapters 5 and 6 and part 5 of chapter 9, and Title 71, chapter 3, part 14~~ chapter 6."

Section 5. Section 28-1-1106, MCA, is amended to read:

"28-1-1106. Application of performance when there are several obligations. Where Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation be is manifested to the creditor, it must be so applied.

(2) If no such ~~application be~~ intention or desire is

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then made manifested, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion~~s~~. ~~and on~~ An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If ~~neither party makes such~~ application is not made as prescribed in subsection (1) or (2) within the time prescribed ~~herein~~, the performance must be applied to the extinction of obligations in the following order and, if there be is more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first--~~of~~interest due at the time of the performance;

(b) second--~~of~~principal due at that time;

(c) third--~~of~~the obligation earliest in date of maturity;

(d) fourth--~~of~~an obligation not secured by a lien or collateral undertaking;

(e) fifth--~~of~~an obligation secured by a lien or collateral undertaking."

Section 6. Section 28-1-1111, MCA, is amended to read:

"28-1-1111. Receipt for money, instrument, or property delivered. ~~(1)~~ Whoever pays money or delivers an instrument or property is entitled to a written receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

~~(2) A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.~~"

Section 7. Section 28-1-1202, MCA, is amended to read:

"28-1-1202. Effect of offer. ~~(1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.~~ (1) AN OFFER IN WRITING TO PAY A PARTICULAR SUM OF MONEY OR TO DELIVER A WRITTEN INSTRUMENT OR SPECIFIC PERSONAL PROPERTY IS, IF NOT ACCEPTED, EQUIVALENT TO THE ACTUAL PRODUCTION AND TENDER OF THE MONEY, INSTRUMENT, OR PROPERTY.

~~(2)~~ (2) An offer of payment or other performance duly made, ~~though the title to the thing offered be not transferred to the creditor,~~ stops the running of interest on the obligation and has the same effect upon all incidents of the obligation as a performance thereof, whether or not

the title to anything offered is transferred to the creditor."

Section 8. Section 28-1-1205, MCA, is amended to read:

"28-1-1205. To whom offer must be made. An offer of performance must be made to the creditor, to any one ~~or two~~ or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation ~~if such creditor or authorized person is present at the place where the offer may be made and if not~~ wherever the creditor may be found."

Section 9. Section 28-1-1212, MCA, is amended to read:

"28-1-1212. Objections to mode of offer -- waiver. All objections to the mode of an offer of performance which the creditor has an opportunity to state at the time to the person making the offer and which could be then be obviated by him such person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor must specify the amount, terms, or kind which he requires."

Section 10. Section 28-1-1303, MCA, is amended to read:

"28-1-1303. Effect when performance prevented by other causes. If full performance of an obligation is prevented by any cause excusing performance other than the act of the

creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance."

Section 11. Section 28-2-102, MCA, is amended to read:

"28-2-102. Essential elements of a contract. ~~(1)~~ It is essential to the existence of a contract that there should be:

~~(a)~~(1) identifiable parties capable of contracting;

~~(b)~~(2) their consent;

~~(c)~~(3) a lawful object; and

~~(d)~~(4) a sufficient cause or consideration.

~~(2) It is essential to the validity of a contract not only that the parties should exist but that it should be possible to identify them.~~"

Section 12. Section 28-2-201, MCA, is amended to read:

"28-2-201. Who may contract. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. Minors and persons of unsound mind have only such capacity as is defined by ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204~~ this part, 28-10-104, and Title 41, chapter 1, ~~parts 1 through 3, except 41-1-303~~."

Section 13. Section 28-2-206, MCA, is amended to read:

"28-2-206. Assignment of nonnegotiable written

contract. A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement ~~in like manner with~~ the same as a negotiable ~~instruments~~ instrument. Such endorsement ~~shall~~ transfer transfers all the rights of the assignor under the ~~instrument~~ contract to the assignee, subject to all equities and defenses existing in favor of the maker contract--debtor MAKER at the time of the endorsement or arising before notice of the assignment is received by him."

Section 14. Section 28-2-403, MCA, is amended to read:

"28-2-403. What constitutes menace. Menace consists in a threat of:

(1) such duress as is specified in subsections (1) and (3) of 28-2-402;

(2) unlawful and violent injury to the person or property of any such person ~~as is specified~~ in circumstances described in 28-2-402; or

(3) injury to the character of any such person."

Section 15. Section 28-2-501, MCA, is amended to read:

"28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not

bound unless they are conformed to; but in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted."

Section 16. Section 28-2-502, MCA, is amended to read:

"28-2-502. When consent is considered fully communicated. Consent is ~~deemed~~ considered to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity to with ~~28-2-501(2)~~ 28-2-501."

Section 17. Section 28-2-504, MCA, is amended to read:

"28-2-504. Acceptance to be absolute. An acceptance must be absolute and unqualified or must include in itself an acceptance of that character which the proposer can separate from the rest and which will ~~conclude~~ bind the person accepting. A qualified acceptance is a new proposal."

Section 18. Section 28-2-512, MCA, is amended to read:

"28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by ~~28-2-501(1)~~ 28-2-501 and 28-2-502 before his acceptance has been communicated to the former;

(2) the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, the

lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or ~~insanity~~ serious mental illness of the proposer."

Section 19. Section 28-2-707, MCA, is amended to read:

"28-2-707. What conditions void. A condition in a contract the fulfillment of which is impossible or unlawful within the meaning of part 6 ~~of this chapter~~ and this part or which is repugnant to the nature of the interest created by the contract is void."

Section 20. Section 28-2-722, MCA, is amended to read:

"28-2-722. Contracts for personal services limited to two years. A contract to render personal ~~service other than a contract of apprenticeship as provided in the chapter on~~ apprentices, services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it~~,~~ but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation."

Section 21. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following ~~contracts~~ agreements are invalid unless the same

or some note or memorandum thereof be is in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent be is in writing, and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) ~~In the following cases the agreement is invalid unless the same or some note or memorandum thereof be in writing and subscribed by the party charged or by his agent; evidence, therefore,~~ Evidence of the an agreement ~~cannot be received~~ described in (A) THROUGH (D) OF subsection (1) is not admissible without the writing or secondary evidence of its contents."

~~(a)--an--agreement--that--by--its--terms--is--not-to-be performed-within-a-year-from-the-making-thereof~~

~~(b)--a-special-promise-to-answer-for-the-debt,-default, or-miscarriage-of-another,-except-in-the-cases-provided--for in-28-11-105~~

~~(c)--an--agreement--made-upon-consideration-of-marriage other-than-a-mutual-promise-to-marry~~

~~(d)--an-agreement-for-the-leasing-for-a--longer--period than--1--year--or--for--the--sale--of-real-property-or-of-an interest-therein,-such-agreement,-if-made-by-an-agent-of-the party-sought-to-be-charged,-is-invalid-unless-the--authority of--the--agent-be-in-writing,-subscribed-by-the-party-sought to-be-charged.~~

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof be is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) ~~shall~~ do not apply to agreements subject to the Uniform Commercial Code."

Section 22. Section 28-2-905, MCA, is amended to read:

"28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) When Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those

terms, and, ~~therefore~~ therefore, there can be between the parties and their representives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where when a mistake or imperfection of the writing is put in issue by the pleadings;

(b) where when the validity of the agreement is the fact in dispute.

(2) ~~But--this~~ This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as ~~defined~~ described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", ~~for the purposes of this section,~~ includes deeds and wills as well as contracts between parties."

Section 23. Section 28-2-1701, MCA, is amended to read:

"28-2-1701. How contract extinguished. (1) A contract may be extinguished in ~~like~~ the same manner with as any other obligation and also in the manner prescribed by part 16 and ~~this section,--28-2-1601,--28-2-1602,--and--28-2-1702 through-28-2-1713~~ part.

(2) A contract is extinguished by its rescission."

Section 24. Section 28-2-1711, MCA, is amended to

read:

"28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party;

(2) if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;

(3) if such consideration becomes entirely void from any cause;

(4) if such consideration, before it is rendered to him, fails in a material respect from any cause; or

(5) by--consent--of if all the other parties consent."

Section 25. Section 28-3-206, MCA, is amended to read:

"28-3-206. Uncertainty to be resolved against party causing it. In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except that in the case of a contract between a public officer or body, as such, and a private party, in

which it is presumed that all uncertainty was caused by the private party."

Section 26. Section 28-3-403, MCA, is amended to read:

"28-3-403. Evidence of usage to clarify. In conformity with the rules of evidence, upon a trial evidence may be given of usage to explain the true character of an-act-or a contract where if such true character is not otherwise plain, but usage is never admissible except as an instrument of interpretation."

Section 27. Section 28-3-702, MCA, is amended to read:

"28-3-702. Necessary and incidental terms. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom unless some of them are expressly mentioned therein, when in which case all other things of the same class are deemed considered to be excluded."

Section 28. Section 28-10-104, MCA, is amended to read:

"28-10-104. Who may appoint an agent, who may be an agent. Any person having capacity to contract, except a minor, may appoint an agent, and any person may be an agent. A-minor-cannot-give-a-delegation-of-power."

Section 29. Section 28-10-211, MCA, is amended to read:

"28-10-211. How agent's act ratified. A ratification

can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, where whenever an oral authorization would suffice, by knowingly accepting or ~~restraining~~ retaining the benefit of the act~~, with notice thereof~~."

Section 30. Section 28-10-301, MCA, is amended to read:

"28-10-301. Agent not to exceed actual authority. An agent must not exceed the limits of his actual authority as defined by ~~parts 1, 2, and 4 through 8 of~~ this chapter and parts 5 and 6 of chapter 11 of Title 30."

Section 31. Section 28-10-404, MCA, is amended to read:

"28-10-404. When and as to whom agent's authority restricted. Every agent has actually such authority as is defined by ~~this party parts 1, 2, and 5 through 8 of~~ this chapter, and parts 5 and 6 of chapter 11 of Title 30 unless specially deprived thereof by his principal and has even then such authority ostensibly except as to persons who have actual or constructive notice of the restriction upon his authority."

Section 32. Section 28-10-405, MCA, is amended to read:

"28-10-405. Implied powers of agent. An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

(2) make a representation respecting any matter of fact, ~~not including~~ except the terms of his authority, but upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made."

~~Section 33. Section 28-10-502, MCA, is amended to read:~~

~~"28-10-502. Effect of unauthorized employment of subagent. If an agent employs a subagent without authority, the former is a principal and the latter his agent and the principal of the former has no connection with the latter. A mere agent of an agent is not responsible as such to the principal of the latter."~~

Section 33. Section 28-10-703, MCA, is amended to read:

"28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of his principal to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being

indemnified for any advance which he has made to his principal, in good faith, on account of the same, and ~~He~~ he is responsible therefor if, after ~~notice--to--the--owner~~ such demand, he delivers it to his principal."

Section 34. Section 28-10-704, MCA, is amended to read:

"28-10-704. Applicability of laws relating to capacity to contract. The provisions of this part are subject to the provisions of ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204,~~ chapter 2, part 2; 28-10-104; and Title 41, chapter 1, ~~parts 1 through 3, except 41-1-303.~~"

Section 35. Repealer. Section ~~28-1-1112, MCA,~~ and section 64-104, R.C.M. 1947, are IS repealed.

-End-